

Fluck Limestone Co., Inc. and International Association of Machinists and Aerospace Workers, AFL-CIO. Case 25-CA-23196

December 15, 1994

DECISION AND ORDER

BY MEMBERS DEVANEY, BROWNING, AND COHEN

Upon a charge filed by the International Association of Machinists and Aerospace Workers, AFL-CIO, the Union, on May 9, 1994, the General Counsel of the National Labor Relations Board issued a complaint on June 15, 1994, against Fluck Limestone Co., Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleges that the Respondent and Union were bound by a succession of collective-bargaining agreements, the most recent of which is effective by its terms from May 1, 1994, to April 30, 1997, and that, during the term of the agreement running from May 1, 1991, to April 30, 1994, the Respondent unilaterally ceased making contractually required pension fund contributions. Although properly served with copies of the charge and complaint, the Respondent did not file an answer controverting the complaint.

On August 17, 1994, counsel for the General Counsel notified the Respondent by telephone and by certified letter that no answer had been filed to the complaint and that, if an answer was not received by August 24, 1994, a motion for summary judgment would be filed. The Respondent replied by a letter dated August 24, 1994, which stated "we agree with the complaint. . . ." and did not deny, state that the Respondent was without knowledge of, or explain, the complaint allegations.

On September 19, 1994, the General Counsel filed a Motion for Summary Judgment. On September 22, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that any allegation in the complaint that is not specifically denied or explained shall be deemed admitted unless the Respondent states that it is without knowledge. The Respondent has not denied, stated that it was without knowledge of, or explained the allegations in the complaint. Therefore, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Bloomington, Indiana, is engaged in the quarry, fabrication, and sale of limestone. During the calendar year ending May 1, 1994, the Respondent sold and shipped goods valued in excess of \$50,000 from its Bloomington, Indiana facility directly to points outside the State of Indiana. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Representative Status of the Union*

The unit described in the collective-bargaining agreement between the parties effective from May 1, 1991, to April 30, 1994, constitutes a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

Since before June 6, 1991, and at all material times, the Union has been the designated and recognized exclusive representative of the unit. This recognition has been embodied in a succession of collective-bargaining agreements between the Union and the Respondent, the most recent of which is effective by its terms from May 1, 1994, to April 30, 1997. At all times since before June 6, 1991, the Union has been the exclusive representative of the Respondent's unit employees for the purpose of collective bargaining.

B. *Refusal to Comply with the Contract*

Since about October 26, 1993, the Respondent failed to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to make contributions on behalf of its employees to the I.A.M. National Pension Fund, Benefit Plan B, without the consent of the Union.

The contractual provisions with which the Respondent has failed to comply relate to wages, hours, and other terms and conditions of employment in the unit and are mandatory subjects for purposes of collective bargaining.

CONCLUSIONS OF LAW

1. By failing to make contractually required pension fund contributions, the Respondent has failed to bargain with the Union and has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

2. The unfair labor practices of the Respondent, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to make the required pension fund payments it has failed to make since October 26, 1993.¹ We shall further order the Respondent to make whole unit employees for any loss of benefits caused by its failure to make these contributions and to reimburse employees for any expenses ensuing from the Respondent's unlawful failure to make such contributions,² as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Fluck Limestone Co., Inc., Bloomington, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to bargain with the Union by failing to make required contributions on behalf of its unit employees to the I.A.M. National Pension Fund, Benefit Plan B.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Pay into the fund, on behalf of its unit employees, those pension fund contributions it failed to make as a result of the unlawful discontinuation of fund payments, in the manner set forth in the remedy section of this decision.

(b) Make whole the unit employees for any loss of pay and benefits suffered as a result of the Respondent's failure to abide by the terms of the collective-bargaining agreement with the Union, and reimburse unit employees for any expenses ensuing from the Respondent's failure to make requested pension fund contributions, in the manner set forth in the remedy section of this decision.

¹ Any additional amounts owed with respect to these fund contributions shall be calculated in the manner set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

² Member Cohen notes that any reimbursement to employees for payments that employees have made to the pension fund would constitute a setoff to the amount that the Respondent owes to the pension fund. See *C. W. Storage*, 315 NLRB No. 16, slip op. at fn. 2 (Sept. 30, 1994).

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Bloomington, Indiana, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to make pension fund contributions on behalf of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL adhere to the terms of our collective-bargaining agreement with the Union, including, but not limited to, the provisions governing pension fund contributions.

WE WILL make whole the unit employees for any losses or expenses they suffered as a result of our failure to abide by the terms of our collective-bargaining agreement with the Union, including making required contributions to the I.A.M. National Pension Fund, Benefit Plan B.

FLUCK LIMESTONE CO., INC.